

13-32a-116. Property disposition -- Property subject to prosecution.

(1) When any property that is pawned or sold to a pawn or secondhand business is the subject of a criminal proceeding, and has been seized by law enforcement pursuant to Section 13-32a-115, the prosecuting agency shall notify the seizing agency, the original victim, and the pawn or secondhand business if it determines the article is no longer needed as evidence pending resolution of the criminal case.

(2) (a) If the property is no longer needed as evidence, the original victim and the pawn or secondhand business from which the property was seized may choose to resolve the matter pursuant to Subsection 13-32a-115(2)(b) within 10 days of notice being given that the property is no longer needed.

(b) The original victim shall notify the seizing law enforcement agency and the pawn or secondhand business of any agreed upon resolution and the seizing agency shall act accordingly.

(3) (a) If the original victim and the pawn or secondhand business from which the property was seized do not resolve the matter within the 10 days under Subsection (2), the original victim or the pawn or secondhand business shall notify the prosecuting agency or law enforcement agency in possession of the property that the disputed claim has not been resolved.

(b) (i) Upon receipt of written notice from the pawn or secondhand business or the original victim that the parties are unable to resolve the disposition of the property as provided, the prosecuting agency shall submit a motion to the court to schedule a property disposition hearing within 45 days after receipt of the notice.

(ii) The prosecuting agency shall provide notice of the hearing to the pawn or secondhand business, the original victim, and any named defendant in the pending criminal case to the last known address or to counsel of record.

(iii) Notice shall be by certified mail or registered mail. Another form of notice may be used if agreed upon by the parties.

(c) The hearing under Subsection (3)(b) may be combined with a preliminary examination or other hearing, in the court's discretion.

(4) At the seized property disposition hearing the court shall take into consideration:

(a) the evidentiary value of the property and the need for its use at trial;

(b) whether alternative evidence, such as photographs, records, or serial numbers, make retention of the property unnecessary;

(c) the proof of ownership of the property and compliance with Subsection 13-32a-115(1) by the original victim;

(d) whether retention of the property would create any undue hardship to the original victim; and

(e) compliance by the pawn or secondhand business with the requirements of this chapter, and potential financial loss to the business if the property were returned to the original victim.

(5) Upon conclusion of the property disposition hearing the court may:

(a) order the return of the evidence to the original victim or to the pawn or secondhand business as it determines appropriate; and

(b) make an initial finding of restitution for the original victim or the pawn or

secondhand business pending resolution of the criminal case.

(6) The court's determination of possession or restitution under Subsection (5) is a continuing order subject to change or modification until the final resolution of the case.

Enacted by Chapter 284, 2012 General Session